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SJC-11947

RONNY ELLIOT vs. COMMONWEALTH.

January 12, 2018.

Supreme Judicial Court, Superintendence of inferior courts. Jurisdiction, Juvenile Court, Transfer hearing. Practice, Criminal, Transfer hearing. Department of Youth Services.

The petitioner, Ronny Elliot, appeals from a judgment of a single justice of this court denying his petition pursuant to G. L. c. 211, § 3. We affirm.

In 1995, Elliot was indicted on charges of murder in the first degree, armed assault with intent to murder, and possession of a firearm without a license. He was seventeen years old at the time. He was convicted by a Superior Court jury, in 1997, of the lesser offense of murder in the second degree as well as of the other offenses. This court affirmed the convictions. See Commonwealth v. Elliot, 430 Mass. 498 (1999). Elliot subsequently filed a motion for a new trial in 2000, and an amended motion for a new trial in 2003. After a hearing, the amended motion was denied, in 2008.¹ The Appeals Court affirmed the order denying the motion for a new trial, and this court denied Elliot's application for further appellate review. See Commonwealth v. Elliot, 80 Mass. App. Ct. 1104 (memorandum and order pursuant to rule 1:28), S.C., 460 Mass. 1115 (2011).

¹ The amended motion for a new trial had previously been bifurcated, and one part had been "deemed withdrawn but not waived without prejudice."

Then, in 2015, Elliot filed his petition pursuant to G. L. c. 211, § 3, in the county court. In the petition, he argued that because he had been "lawfully committed to the Department of Youth Services" at the time of the murder, he was entitled to a transfer hearing pursuant to G. L. c. 119, § 61, which was then in effect.² Because no transfer hearing was held, the Superior Court, in Elliot's view, did not have jurisdiction to try him for murder.³ The single justice denied the petition, noting that at the relevant time -- when the murder occurred in 1995 -- a seventeen year old was an adult in the eyes of the juvenile and criminal law. On that basis, Elliot was not entitled to a transfer hearing.

In his appeal to this court, Elliot continues to press the argument that he was entitled to a transfer hearing in the Juvenile Court and that because he did not receive one, the Superior Court lacked jurisdiction over his case. General Laws c. 119, § 61, provided at the time that

"[t]he [C]ommonwealth may request a transfer hearing whenever it is alleged in a complaint that a child, who is fourteen years old or older, has committed an offense against a law of the [C]ommonwealth, which, if he were an adult, would be punishable by imprisonment in the [S]tate prison, and that the offense has allegedly been committed by a child who had previously been committed to the [D]epartment of [Y]outh [S]ervices."

G. L. c. 119, § 61, as amended through St. 1993, c. 12, § 3. In Elliot's view, because he was a child who was fourteen or older and had been previously committed to the Department of Youth Services (department), he was entitled to a transfer hearing. The problem with this argument is that the statute only applied in cases where the Juvenile Court had jurisdiction in the first

² General Laws c. 119, § 61, has since been repealed, but the parties agree that it was in effect at the relevant time and is applicable here.

³ It appears that Elliot is raising this issue for the first time in his G. L. c. 211, § 3, petition. Although it is presented as a jurisdictional argument and can be raised at any time, the more appropriate course would have been for Elliot to raise the issue in a motion for a new trial (and then to appeal in the normal course from any adverse decision on the motion). The single justice did not dwell on this technicality and instead decided the issue on the merits; we do the same.

instance. (There would be no need for a transfer hearing unless the case originated in the Juvenile Court.) Because a seventeen year old was not, at the time, considered a "child," the Juvenile Court did not have jurisdiction over the matter. See, e.g., G. L. c. 119, § 52, as amended through St. 1992, c. 379, § 15 (defining the ages for "delinquent child" as between seven and seventeen and for "youthful offender" as between fourteen and seventeen). See also R.L. Ireland & P. Kilcoyne, *Juvenile Law* § 1.16 (2d ed. 2006 & Supp. 2018) (addressing Juvenile Court jurisdiction and noting that in 2013, the Legislature expanded the jurisdiction of that court over delinquency and youthful offender cases by raising the age of the offender from seventeen to eighteen). Furthermore, the fact that Elliot had previously been committed to the department was, in the circumstances, of no moment because Elliot would not have been subject to the jurisdiction of the Juvenile Court in any event.

The single justice did not err or abuse her discretion in denying relief pursuant to G. L. c. 211, § 3.

Judgment affirmed.

Ronny Elliot, pro se.

Paul B. Linn, Assistant District Attorney, for the Commonwealth.